UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,019	12/12/2003	Qiong Cheng	CL2029USNA	2505

23906   7590   07/28/2006

E I DU PONT DE NEMOURS AND COMPANY
LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1128
4417 LANCASTER PIKE
WILMINGTON, DE 19805

EXAMINER
KETTER, JAMES S

ART UNIT	PAPER NUMBER
1636	

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>1</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-12_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) _1-12_ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

The claims recite 5 discrete mutations: thrS, rpsA, rpoC, yjeR and rhoL, which may be present in the invention in any combination, with any number of the 5 mutations being present. This represents a prohibitively large number of combinations to write out, so Applicant is required to elected one combination for examination, with 1-5 of the mutations being present, said mutations being particularly specified in the election. This is an election between inventions, not a species election

The inventions are distinct, each from the other because of the following reasons:

The inventions of the above delineated combinations are directed to related products and methods of using those products. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, each mutated gene encodes a gene product with a distinct function, i.e., mode of operation, and therefore each combination of those genes would have a different mode of operation by virtue of different gene functions being present or absent.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve

a right to petition, the election must be made with traverse. If the reply does not distinctly and

specifically point out supposed errors in the restriction requirement, the election shall be treated

as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably

distinct, applicant should submit evidence or identify such evidence now of record showing the

inventions or species to be obvious variants or clearly admit on the record that this is the case. In

either instance, if the examiner finds one of the inventions unpatentable over the prior art, the

evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the

inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

currently named inventors is no longer an inventor of at least one claim remaining in the

application. Any amendment of inventorship must be accompanied by a request under 37 CFR

1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to James S. Ketter whose telephone number is 571-272-0770. The

examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Remy Yucel can be reached on 571-272-0781. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSK
20 July 2006

JAMES KETTER
PRIMARY EXAMINER